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No. [redacted] 89

In the Supreme Court of the United States.

OCTOBER TERM—1927.

J. ROBERT COGEN,
Plaintiff-in-Error,

vs.

UNITED STATES OF AMERICA,
Defendant-in-Error.

IN THE MATTER
OF

The Application for the return of Certain papers, cards, memoranda and books, and other papers and memoranda seized from the person of the defendant, J. ROBERT COGEN, and for the suppression of all evidence obtained therefrom.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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TO THE HONORABLES, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, J. ROBERT COGEN, respectfully submits his petition for a writ of certiorari to review the

decree of the United States Circuit Court of Appeals for the Second Circuit in the above entitled case.

The Circuit Court of Appeals for the Second Circuit has dismissed an appeal (or writ of error) from an order of the District Court of the United States for the Southern District of New York denying petitioner's motion for a return of papers taken from his person by prohibition agents, and for the suppression of evidence obtained therefrom.

Statement of Case.

On May 4, 1927, at 1435 Madison Avenue, New York City, prohibition agents without a warrant of any kind searched the person of the petitioner and found various papers. These they seized (fols. 16-17). Some or all of these papers were delivered to the United States Attorney.

Sometime later, it does not appear when, petitioner and others were indicted in the District Court of the United States for the Southern District of New York on a charge of conspiracy. While this indictment was pending petitioner applied in that court for the return of the papers seized and for the suppression of evidence that the United States Attorney might have obtained therefrom, alleging that the search and seizure had been in violation of his constitutional rights (fols. 21-24).

This application was heard by the Hon. Frank J. Coleman, and by him denied in an order of court dated January 12, 1928 (fols. 61-66).

From this order petitioner took a writ of error to the United States Circuit Court of Appeals for the Second Circuit.

The Court of Appeals on February 20, 1928, dismissed the "appeal" (Act of January 31, 1928) on the

sole ground that the order of the District Court was interlocutory and not appealable. The merits were not discussed. The opinion of the Court was by Judge Learned Hand. Judge Manton wrote a concurring opinion.

Single Question Presented.

The record presents one question only:

> Is an order of a District Court granting or refusing an application for the return of seized property, not involving the vacating of a search warrant and made during the pendency of a criminal charge against the applicant, final and appealable?

The decision of the Circuit Court of Appeals conflicts with the theory of four decisions of this Court, and with two of the Court of Appeals of the Sixth Circuit: the question decided is most important.

In *Perlman* v. *United States*, 247 U. S. 7, *Burdeau* v. *McDowell*, 256 U. S. 465, *Essgee Company* v. *United States*, 262 U. S. 151, and *Steele* v. *United States*, 267 U. S. 498, this Court reviewed on the merits orders of District Courts granting or denying applications for the return of seized property.

Those cases are distinguished from the present by the Court below on the basis of technical factual differences having no relation to the theory of this Court's decisions or to the final character of the orders reviewed.

The same may be said as to the distinctions drawn by the Court below between this case and *Dowling* v.

Collins, 10 Fed. (2d) 62, decided by the Court of Appeals of the Sixth Circuit, the dictum of which squarely conflicts with the decision below. *McDaniel* v. *United States*, 294 Fed. 769, a previous decision of the Sixth Circuit Court of Appeals and also containing such dicta, is not referred to by the Court below.

The point involved should be settled by this Court. The enforcement of regulatory measures like the Anti-Narcotic Act and the Prohibition Act requires constant searches for and seizures of contraband, and in consequence temptations to enforcement officers to overstep and evade the restrictions of the Fourth Amendment, and many nice problems are presented as to when property seized must be surrendered. And so applications for the return of seized property have become a steady feature of the administration of justice in the federal courts.

The question of when decisions of District Courts on these applications can be reviewed is most important both to defendants and to the Government. The reversal of an erroneous decision will spare defendants the time, anxiety and expense that a trial, possible conviction and appeal will cost, and additional hazards will be added to the recovery of property unjustly seized. Even more important is the question to the Government. If an order on such an application made during the pendency of charges against the applicant are not final, then the Government can never obtain review of decisions adverse to it.

Wherefore, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the Circuit Court of Appeals had in said cause, to the end that

this cause may be reviewed and determined by this Honorable Court as provided by the Statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Honorable Court and for such further relief as to this Court may seem proper.

J. Robert Cogen,

Sanford H. Cohen,
Charles Dickerman Williams,
Counsel.

Affidavit of Verification.

United States of America, }
State of New York, } ss.:
County of New York, }

J. Robert Cogen, being duly sworn, deposes and says: I am the petitioner in the above entitled action. I have read the foregoing petition and the same is true as I verily believe.

J. Robert Cogen.

Sworn to before me this
[illegible] day of March, 1928.

Certificate of Counsel.

We hereby certify that we have examined the foregoing petition for a writ of certiorari, and in our opinion such petition is well founded and should be granted by this Honorable Court, and said petition is not presented for purposes of delay.

Sanford H. Cohen,
Charles Dickerman Williams.

BRIEF IN SUPPORT OF PETITION.

POINT I.

Under decisions of this Court the order of the District Court was final and appealable.

a. Facts.

The material facts of this case are not in dispute and are as follows:

Without a warrant prohibition agents on May 4, 1927, searched the person of Cogen, the petitioner, found and seized various papers and delivered them to the United States Attorney for his use in prosecuting petitioner.

Thereafter petitioner and others were indicted in the United States District Court for the Southern District of New York on a charge of conspiracy.

While this indictment was pending, petitioner (only) applied to the District Court for the return of the papers and for the suppression of evidence obtained therefrom on the ground that the search and seizure had violated his constitutional rights.

An order denying this application was entered in the District Court on January 12, 1928.

Petitioner appealed* to the United States Circuit Court of Appeals for the Second Circuit, but the appeal was dismissed by that Court. In its opinion the Court said the District Court order was interlocutory and not appealable. The merits were not discussed.

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* Petitioner actually proceeded by writ of error. Apparently in view of the Act of January 31, 1928, the C. C. A. dismissed the "appeal". To avoid confusion of names, the word "appeal" will be used exclusively herein to describe the review proceeding.

b. By the definitions, the decision of this Court and analogy generally the order appealed from was final.

We submit and propose to show that:

An application for the return of property in the possession of prosecuting officers is a special proceeding, and if indictment is pending a special proceeding in the criminal case, and the order on the application finally determines the rights of the parties in the subject matter.

In *Trustees* v. *Greenough*, 105 U. S. 527, plaintiff sued to set aside certain fraudulent conveyances. A fund came into the hands of the Court and its distribution was objectionable to plaintiff. The litigation being undetermined, he appealed from an order of distribution. This Court said:

> "The order is certainly a final one of the particular matter arising upon the petition for allowance. Though incidental to the cause, the inquiry was a collateral one, and receiving a final decision that the main suit might continue for years. We think the proceedings may be regarded as so far independent as to make the decision substantially a final decree for the purpose of an appeal."

In *Williams* v. *Morgan*, 111 U. S. 689, the Court, speaking of an appeal from an order fixing the fee of a trustee in an unfinished case, said:

> "It was in its nature final, and was made a matter distinct from the general subject of litigation."

In *Brush* v. *Electric Imp. Co.*, 51 Fed. 557 (C. C. A. 9th), a plaintiff who had unwillingly been joined as a party, moved to dismiss, and this motion was overruled. Upon appeal the Court said:

> "We reach the conclusion that the term 'final decision' in said statute under consideration does not mean necessarily such decisions or decrees only which finally determine all the issues presented by the pleadings; that, while these are undoubtedly final decisions, the terms are not limited to them, *but also apply to a final determination of a collateral matter distinct from the general subject of litigation, affecting only the parties to the particular controversy, and finally settles that controversy.*"

The Court held the order appealable.

This doctrine has recently been affirmed in *United States* v. *River Rouge Co.*, 269 U. S. 411.

In this case the controversy as a whole is between the United States on one hand, and Cogen and others on the other, and the issue is whether the defendants are guilty of the crime of conspiracy.

Such being the general controversy, this particular matter is to determine, and only determine whether the United States Attorney or Cogen is rightfully entitled to certain seized papers.

In *Segurola* v. *United States*, decided November 12, 1927, this Court referred to a controversy of this kind in the following language:

> "The Court will not in trying a criminal cause permit a collateral issue to be raised as to the source of competent evidence. To pursue it would be to halt in the orderly progress of a cause and

consider incidentally a question which happened to cross the path of such litigation and which is wholly independent of it."

These are the general principles. We shall now discuss cases applying these rules to applications for the return of seized property.

c. Controlling authorities distinguished on untenable grounds.

This Court has *four times* held orders granting or refusing applications for the return of papers or property final and appealable. *Perlman* v. *United States*, 247 U. S. 7, *Bardeen* v. *McDowell*, 256 U. S. 475, *Essgee Company* v. *United States*, 262 U. S. 151, and *Steele* v. *United States*, 269 U. S. 498.

The Court below has not to any appreciable extent discussed the theory of this Court in those decisions or discussed the true nature of "final" orders, but has rather endeavored to demonstrate, by refined analysis, that this case is not in all respects the same as those, failing, nevertheless, to give reasons why the distinctions discovered should control.

d. Classes of orders conceded to be final and appealable.

The Court below concedes:

1. That where an application is made for the return of seized property then in the possession of prosecuting officers, and at the time no indictment against the applicant is pending, an order granting or denying the appli-

cation is final and appealable. *Perlman v. United States, supra; Burdeau v. McDowell, supra.*

2. That where an application is made for the return of property seized under a search warrant, and an indictment is pending against the applicant, an order granting or denying the application is final and appealable. *Steele v. United States, No. 1, supra.*

3. That where an application is made for the return of property produced under a subpoena *duces tecum*, and an indictment is pending, an order granting or denying the application is final and appealable. *Essgee Co. v. United States, supra.*

But, says the Court below, if an indictment is pending, and no court writ had been issued, the order is interlocutory and not appealable.

e. Pendency of an indictment is no more material where a court writ hasn't issued than where it has, and the Sixth Circuit Court of Appeals has so held.

In *Perlman v. United States* exhibits produced by Perlman upon the trial of a civil case were impounded by an order of the Court. Thereafter the United States Attorney applied for possession of the exhibits as material and necessary "*in an investigation pending before the grand jury*" (249 U. S. 10), and in response the Court issued an order affording the United States Attorney access to the exhibits and directing the Clerk of the Court to produce the exhibits before the Grand Jury upon the United States Attorney's demand. Thereafter Perlman prayed that the use of the exhibits by the United States Attorney be forbidden. The prayer

was denied by an order of the District Court from which Perlman sued out a writ of error.

The Court said:

> "The second contention of the Government is somewhat strange, that is, that the order granted upon its solicitation was not final as to Perlman but interlocutory in a proceeding not yet brought and depending on it to be brought. In other words, that Perlman was powerless to avert the mischief of the order but must accept its incidence and seek a remedy at some other time and in some other way. We are unable to concur."

That is, the order authorizing the United States Attorney to use the exhibits in the "investigation pending before the grand jury" was final.

Perlman did not have to wait until the pending proceeding had resulted in a judgment of conviction against him before seeking review.

In *Burdeau* v. *McDowell*, *supra*, the Court said:

> "The exact question to be decided here is: May the Government retain incriminating papers, coming to it in the manner described, with a view to their use in a subsequent investigation by a grand jury where such papers will be part of the evidence against the accused, and may be used against him upon trial should an indictment be returned?"

This Court reviewed and reversed the District Court order granting a return of the papers.

Although of course no proceeding was pending at the time of the application the Court below goes a long

way in saying that the *Burdeau* case does not hold that an order granting or denying return of seized papers is not a final order. Certainly the spirit and tenor of the *Burdeau* and *Perlman* cases is that such an application is a special proceeding, and that the order determining who is entitled to the papers or other property is final.

Is there a word in either opinion that intimates that if an indictment had been pending the review would be impossible? The Court cites none and counsel has found none.

Our view is confirmed by two opinions of the Circuit Court of Appeals for the Sixth Circuit, in *McDaniel v. United States*, 294 Fed. 769, and *Dowling v. Collins*, 10 Fed. (2d) 62.

In the *McDaniel* case a federal postal inspector obtained from an Indiana state court a search warrant directed to a municipal police officer. McDaniel's papers were seized under this search warrant. He was indicted and tried. Upon the trial he objected to the introduction in evidence of these papers upon the ground that the search and seizure had been in violation of his constitutional rights. The Court stated the rule that a Court will not interrupt a trial to inquire into how evidence otherwise admissible was obtained, and then said:

> "It was held that a departure from the rule was justified if the search and seizure were in fact made by United States officers or agents in violation of the Fourth Amendment and a seasonable and timely application were made in advance of trial for the suppression of evidence thus wrongfully obtained and for a return of the seized documents. However, it has been later held in *Perlman v. United States*, 247 U. S. 7, 38 Sup. Ct. 417, 62 L. Ed. 950, *that an order granting or refusing such an applica*

tion is a final and appealable order, and in *Burdeau* v. *McDowell*, 256 U. S. 465, 41 Sup. Ct. 574, 65 L. Ed. 1048, 13 A. L. R. 1159, *an appeal from such an order was permitted on behalf of the government.* If there is an inconsistency in permitting a final and appealable order to be later re-examined collaterally and disregarded, it seems to have passed unnoticed."

Although not in so many words the Court plainly shows that it regards the *Perlman* and *Burdeau* cases as holding that orders on such applications, if made in advance of *trial*, not of indictment, and not involving the District Court's own writ (it was a *state* court search warrant) are final and appealable.

Again in the *Dowling* case, *supra*, the Sixth Circuit Court of Appeals showed the same opinion.

In the District Court for the Eastern District of Kentucky, a defendant in a criminal case, *indictment pending*, moved separately for the return of property seized under a search warrant and the suppression of its use as evidence. The two motions were joined, and an order denying both motions on the merits was entered. The defendant was subsequently tried, but the outcome of the trial does not appear.

Thereafter defendant applied to the court for the return of this property. The District Court denied the application on the ground that the prior order, being final and appealable was *res adjudicata*.

This view was sustained by the Sixth Circuit Court of Appeals. It said:

> "The reasoning of the opinion in *Perlman* v. *United States*, 247 U. S. 7, as well as in *Burdeau* v. *McDowell*, 256 U. S. 465, fully supports the conclusion that *the orders on the preliminary motions*

and petitions in the criminal case were final and as such reviewable in this court; though entitled in that case they were no essential part of the trial therein; as preliminary matters they were as independent therefrom as were the petitions in the Perlman and Bardeau cases."

Concededly at the time the preliminary application was denied an indictment against the applicant was pending.

The Court below has distinguished the *Dowling* case on the ground that the order was final because the vacating of a search warrant was involved. Yet the Sixth Circuit Court of Appeals relied *solely* on decisions of this Court *not involving search warrants or other writs* in holding the order final.

The Court below also distinguishes *Dowling* v. *Collins* by saying that the property there involved had a value other than evidentiary. The property was contraband liquor which certainly has no marketable value. Books and papers of account have no marketable value, but they are extremely valuable to their owners. Where is the line to be drawn? The suggestion of the Court below is a novel one and finds no support in any authority counsel could discover, and certainly finds none in the cases here discussed.

f. *Steele* v. *United States* was misunderstood by the Court below, as its opinion shows.

In the *Steele* case the applicant's property had been seized under a search warrant issued by a commissioner. After the seizure the warrant was traversed by Steele, but the commissioner sustained the warrant. Steele was

later indicted, and then he applied to the District Court for an order vacating the search warrant and returning the property seized thereunder. This application was denied by a judge of the District Court who was *not* the judicial officer who had issued the warrant. Steele appealed from the order denying the application, and this Court reviewed the matter on the merits.

Now the opinion of the Court below shows that it misunderstood the *Steele* case. It said:

> "Under Section 16 of the Search Warrant Act upon the return of the executing officer the judge or commissioner allowing the writ is to restore property unlawfully seized. Such an order was treated *sub silentio* as a 'final decision' in *Steele* v. *United States* * * *."

But the order appealed from was *not* the order of the judge or commissioner who had allowed the writ. A commissioner had allowed the writ but the order appealed from was made by a judge in a proceeding brought in the District Court, and in the criminal case.*

Thus in the *Steele* case an order refusing to return seized property, the order having been made in a special proceeding in the criminal case, indictment pending, was reviewed on appeal—and the case is misunderstood by the Court below, which thinks that the order ap-

* The docket of the District Court in the *Steele* case shows the following entries:

October 20, 1923—Information Filed (Possession of Intoxicating liquor)
October 22, 1923—Defendant Pleads Not Guilty
October 31, 1923—Motion to set aside and Vacate Search Warrant and for the return of Property Returnable Nov. 5th, 1923
November 7, 1923—Motion Denied—Winslow, J.
March 12, 1924—Trial—Verdict Guilty—Fine $500.00

pealed from was the order of the judge who allowed the writ, and made by that judge in the course of proceeding provided for in the Espionage Act and described on page 501 of 267 U. S.*

g. *Essgee Company* v. *United States* has been similarly misunderstood.

In the *Essgee Company* case a subpoena *duces tecum* had been served on an officer (one Schratter) of a corporation, commanding him to produce certain corporate papers at the U. S. Courthouse. This he did, and left them on a table where the United States Attorney found them and took them. The papers were brought before the Grand Jury and Schratter was subsequently indicted. Indictment pending Schratter applied for a return of the papers. The decision on the application seems to have involved the propriety of the subpoena, but the application was certainly not directed at the subpoena nor did it involve vacating, quashing or otherwise disposing of the subpoena. It was purely and simply an effort to get back papers which the United States Attorney had for the purpose of prosecuting the applicant.

The Court below has said:

> "The case is in any event to be distinguished in that the motion was for the determination of a proceeding commenced by the court's writ."

The determination was *not* of a proceeding commenced by the court's writ.

*These facts are not entirely clear from the opinion of the court, but counsel has examined the record and can assure this court that the facts here stated are correct.

The proceeding had been commenced by the appellant's application for the return of papers which the United States Attorney had; he happened to have them because of a subpoena served months before.

The Court's implication is that the proceeding was one to vacate a court's writ, but, of course, that is not the case.

h. The *Segurola* case shows that this Court attaches no importance to the pendency of an indictment or connection with a court writ.

In *Segurola v. United States*, *supra*, this Court showed that it did not consider applications for the return of seized property as any more an integral part of a main criminal case when no search warrant, subpoena or other writ was involved. In that case Segurola had been searched without a warrant and property in his possession seized. Without previous application he objected to his introduction at the trial.

This Court said:

> "The Court will not in trying a criminal case permit a *collateral* issue to be raised as to the source of competent evidence. To pursue it would be to halt in the orderly progress of a cause and consider incidentally a question which happened to cross the path of such litigation and *which is wholly independent of it.*"

i. Summary.

In an involved suit it is not unusual that a controversy arises between some or all of the parties on a matter separate from the issues raised by the pleading. In equity receiverships, for instance, such separate controversies are constant—this or that property is sold, allowances are made, and so on. The final determination of the court of first instance in these incidental matters is appealable.

Under the doctrine of this Court in that well known series of cases, *Boyd* v. *United States*, 116 U. S. 616, *Weeks* v. *United States*, 232 U. S. 383, *Gouled* v. *United States*, 255 U. S. 298 and others, applications for the return of property possessed by prosecuting officers, have become well-defined proceedings of frequent occurrence in the District Courts. Sometimes these applications are made before indictment, sometimes after. Sometimes the applicant is the only person proceeded against, or to be proceeded against (*Perlman* case); sometimes, as here, only one of the defendants is interested in the application. Sometimes the property in question has been obtained under a search warrant; sometimes because a party has been coerced by subpoena; sometimes it has merely been seized, as here, and as in the *Segurola* case.

In the *Essgee Company* case these proceedings were briefly described as follows:

> "The review sought is of an order of the District Court in which no jury can intervene. It likens itself in its appellate character to a review of cases in equity or admiralty in which issues of fact are triable to the court, and in which the review may properly involve a re-examination by the reviewing

court of the whole record of the court upon both the law and the evidence therein."

These proceedings determine who, as between the prosecuting officer and the applicant, is entitled to the property, the subject matter of the application. It is quite apart from the general issue—which here is whether or not petitioner and others were conspirators against the laws of the United States.

The opinion of the Court below shows it has confused these principles. A controversy does not become the less a special proceeding because some more important issue is pending between the parties, nor does the incidental fact that the merit of some court writ is questioned introduce some strange magic which gives the order determining the controversy an appealable character.

The theory urged by counsel harmonizes the decisions of the Court and has been adopted by the Circuit Court of Appeals of the Sixth Circuit.

POINT II.

The decision in this case is highly important.

a. A conflict exists between the Second and Sixth Circuits.

Whatever may be said as to factual distinctions between this case and *Dowling* v. *Collins*, it is clear from the opinion in that case that the Circuit Court of Appeals of the Sixth Circuit regards orders on applications for the return of property seized as final and appealable.

We quote again from the *Dowling* case:

> "The reasoning of the opinion in *Perlman* v. *United States*, 247 U. S. 7, as well as in *Burdeau* v. *McDowell*, 256 U. S. 465, fully supports the conclusion that the orders on the preliminary motions and petitions in the criminal case were final and as such reviewable in this court; though entitled in that criminal case, they were no essential part of the trial therein; as preliminary matters they were as independent therefrom as were the petitions in the *Perlman* and *Burdeau* cases."

In the *Dowling* case an indictment was pending at the time the application was made. By citing decisions of this Court in cases in which no indictment was pending at the time of the order, the Court shows that it does not think the pendency of an indictment changes the final character of the order. Although a writ was involved in the *Dowling* case, no writ was involved in the authorities cited, so that the Sixth Circuit Court of Appeals does not think that a material feature.

b. The case is extremely important to the Government.

Although presumably a defendant could eventually obtain review on the merits in an Appellate Court, the same can not be said of the Government.

If an application like the present is granted, in very many cases it will mean that the evidence is insufficient to obtain a conviction and the prosecution will fail, unless the order is reversed.

But if appeal does not lie, the order can not be reversed and the prosecution will fail without the Government's having had an opportunity for review.

Take *Burdeau* v. *McDowell*. Suppose there the application had not been made until after indictment. In that case the District Judge granted the application. The Government would never have been able to obtain review and the prosecution would have failed, and wrongfully, because the District Court's order was erroneous.

These applications are numerous; and the law of search not yet entirely settled as the frequent reversals in search cases show. The Government can not afford to lose its opportunity for review.

c. The present decision in connection with the rule recently insisted upon in *Segurola* v. *United States* will cause confusion.

In *Segurola* v. *United States*, it appeared that property of a defendant in a criminal case had been seized at the time of his arrest, unconstitutionally, he thought. There was no search warrant. At the time of the trial he objected to the seizure for the first time by opposing the introduction of this property in evidence, but it was admitted. This Court said:

> "* * * The court will not in trying a criminal cause permit a collateral issue to be raised as to the source of competent evidence. To pursue it would be to halt in the orderly progress of a cause and consider incidentally a question which happened to cross the path of such litigation and which is wholly independent of it. In other words in order to raise the question of illegal seizure, and an absence of probable cause in that seizure, the defendants should have moved to have the liquor re-

turned to them as their property and as not subject to seizure or use as evidence."

Let us suppose the defendant does make such a motion and it is denied.

Then how is the defendant to obtain review?

He cannot raise the question at the trial so his bill of exceptions will not show his grievance.

Nor, if the decision of the Court below is right may he appeal direct.

d. The case is important to defendants.

Suppose the defendant is acquitted at the trial.

How is he to get his property back? He cannot appeal from the order denying his application; he cannot appeal from a judgment of acquittal.

Suppose the defendant is convicted. There is great uncertainty, as outlined above, as to how to protect his rights.

Moreover, it is extremely difficult, if not impossible, for the petitioner to protect the rights given him under the decision of this Court in *Silverthorne Lumber Company* v. *United States*, 251 U. S. 385, the doctrine of which case forbids prosecuting officers not only to introduce wrongfully seized property, but to use in a prosecution information which they may have derived from property wrongfully seized. How is the petitioner Cogen to know when testimony is produced at the trial whether or not the Government was able to obtain such testimony from information which it obtained by examining these papers? If the petitioner Cogen's rights are to be fully protected it will be necessary, continually, to inquire whether or not the testimony offered was so obtained, and, certainly, such in-

quiries would cause "halts in the orderly progress of a cause" more disturbing and more embarrassing than those which this Court said in the *Segurola* case must be avoided.

POINT III.

The writ of certiorari should issue.

Respectfully submitted,

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